



WHAT DO SOCIAL MEDIA ARCHIVING TRENDS MEAN FOR FINANCIAL INSTITUTIONS?

WHITEPAPER

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01

INTRODUCTION



It's often tempting to view social media as simply an extension of email correspondence or newsletters. In the early days of social networking, that may have held some truth, but today, social media has become a juggernaut in its own right. Social media has grown at a rate no-one could have predicted and is quickly evolving into a new beast of legal responsibilities.

For financial institutions, social media platforms are fast becoming places of liability. Incidents that trigger lawsuits are occurring online, and they require just as much investigation and documentation as any incident that occurs on-site at your institution.

Posting on social media may seem in the moment, but these sorts of scenarios demand rigor around archiving your engagements.

This paper looks to highlight some overarching issues around social media engagement for financial institutions.

WHAT HAPPENS IF:

- Someone has been bullied or defamed on your social media page, resulting in legal action? Could you be held liable for comments posted by third-parties to your page?
- Someone has complained via social media? Are you obliged to respond?
- You encounter non-financial risk? Should this be treated as seriously as financial risk?

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COULD YOU BE LEGALLY RESPONSIBLE FOR USER COMMENTS ON SOCIAL MEDIA?

In June 2019, a Supreme Court ruling in New South Wales created new concerns for every single business that uses social media to communicate with its users.

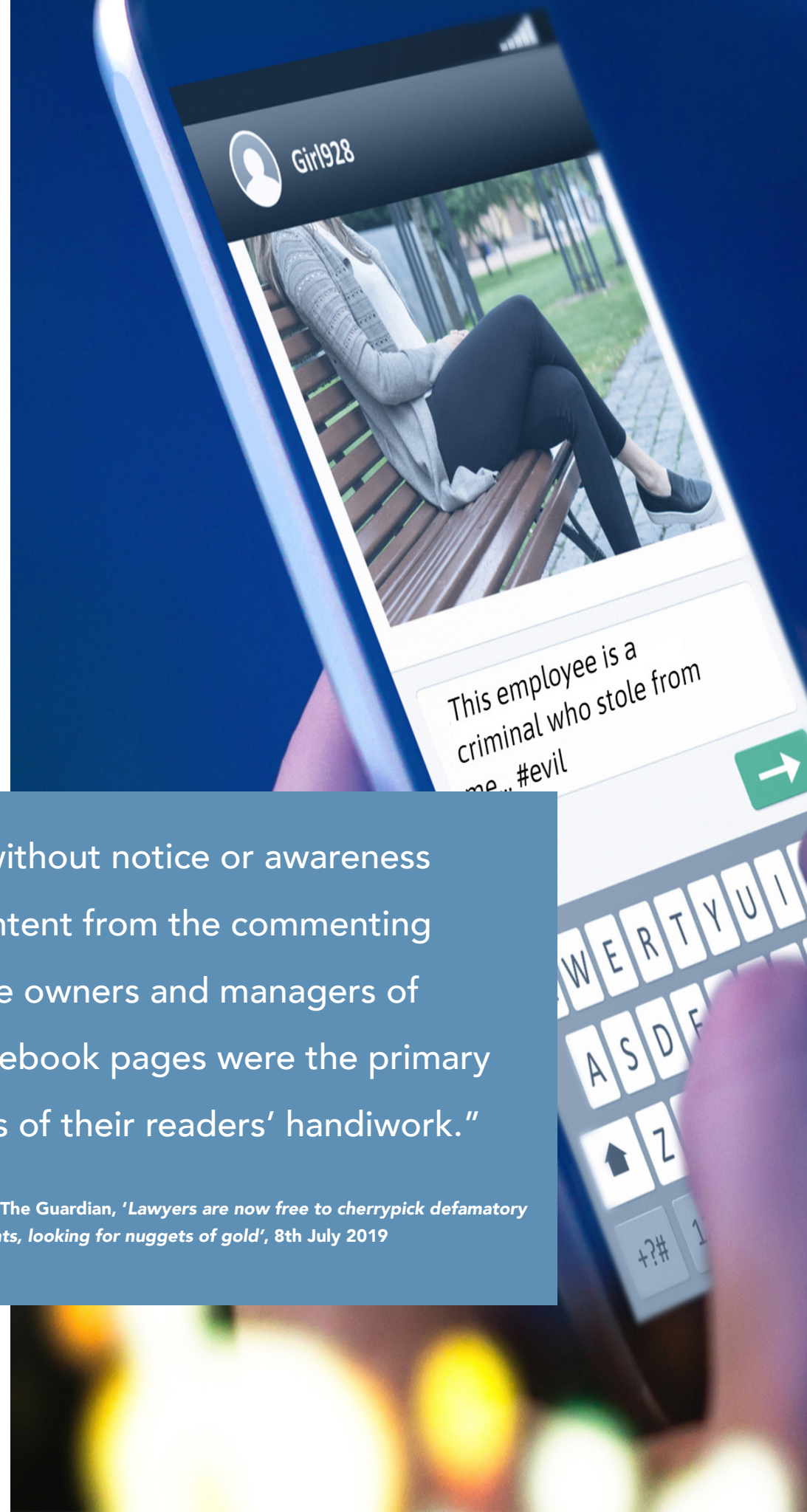
In his ruling, Justice Stephen Rothman found that operators of commercial Facebook pages are legally liable for defamatory comments made on their pages, even if those comments are made by members of the public who are unconnected to the business. While it was acknowledged that third parties left the comments at the centre of the defamation case of *Voller v Nationwide News and Ors* [2019] NSWSC 766, Justice Rothman ruled that the organisations named in the suit could be considered 'first or primary publishers' as their use of public Facebook pages were linked to their own commercial interests.

The court found that it was possible to hide most comments until a moderator had approved them for view, though Facebook is not designed to easily allow for this, and that organisations should have sufficient staff to moderate social media comments (by their estimate, 2.5 staff members spending 10 seconds reviewing each comment should be sufficient to get through 7000 comments a day).

While this ruling is controversial and will be appealed, it highlights the very real need for businesses to take social media risk seriously.

"...even without notice or awareness of the content from the commenting public, the owners and managers of these Facebook pages were the primary publishers of their readers' handiwork."

- Richard Ackland, *The Guardian*, 'Lawyers are now free to cherrypick defamatory Facebook comments, looking for nuggets of gold', 8th July 2019





03

DO YOU HAVE TO ACT ON SOCIAL MEDIA COMPLAINTS?

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In May 2019, the Australian Securities and Investments Commission (ASIC) outlined considerations to classify social media complaints directed at banks and financial service providers as official complaints that will legally need to be acted upon. In addition to this, ASIC has broadened the definition of a complaint to include statements of overall consumer dissatisfaction, as opposed to a specific incident or issue.

As per ASIC, "The inclusion of expressions of dissatisfaction made 'about' an organisation does, however, mark an important development. By broadening the definition in this way, AS/NZS 10002:2014 establishes social media as a legitimate channel for making complaints.

We consider this to be appropriate, given that long-established patterns in how consumers complain to organisations are changing significantly."

This broader interpretation of what constitutes a complaint means financial institutions will need to put a greater focus on social media moderation. Comprehensive, real-time archiving will also protect your business should a comment be edited after publication to meet the definition of a complaint and thus missed, or if a user deletes comments and then misrepresents the conversation in a complaint escalated to a regulator or watchdog.

NON-FINANCIAL RISKS

In April 2019, the Actuaries Institute released *'The Social Condition Report – A Suggestion for Financial Services Businesses'* in response to *'The Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry'*. In this report, co-authored by Ian Laughlin, former deputy chairman of the Australian Prudential Regulation Authority, bank boards were urged to consider the appointment of 'social risk officers' to help quantify and respond to non-financial risk.

SOCIAL RISKS TO CONSIDER

The Social Condition report identified social risk areas, including:

- **True Values Risk** – the risk that the **actual values**, as shown through attitudes and behaviour of management and employees, **are inconsistent with the espoused values**.
- **Self-Awareness Risk** - the risk that a business engages in or **effectively condones poor behaviour** without realising this is how it would be seen by others.
- **Fake News Risk** - where **stories about poor behaviour** – real or perceived – by financial institutions are likely to continue to be prominent. This can also include 'revenge risk', where **disgruntled customers undertake social media campaigns** to create negative publicity.
- **Litigation Risk** - society in general is becoming more litigious, and **the legal profession increasingly regards financial services litigation as a fruitful area of work**.

"Financial services entities must now accept that financial risks are not the only risks that matter. The prudent management of non-financial risks is equally important. Financial services entities must give sufficient attention, and devote sufficient resources, to the effective management of non-financial risks."

- Kenneth Hayne, Banking Royal Commissioner, *The Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, 2019





05

THE BENEFITS OF SOCIAL MEDIA FOR INSURERS

With nearly 9 in 10 Australians using social media as of 2018*, insurers have a golden opportunity to communicate with clients around risk preparation, response and recovery.

Social media sites are of tremendous benefit in communicating and sharing important information during natural disasters in particular. These sites can be used before and after natural disasters in the following ways:

- Passively - this involves the use of social media to share information and receive feedback. Suncorp's Canstar award-winning Cyclone Resilience Benefit, which offered discounts of up to 20% to customers in North Queensland who made improvements to their home to fortify it from cyclones, was an initiative which was widely promoted on social media to wide acclaim.
- Actively - sites like Facebook and Twitter can be used to inform victims of support and relief team visits to disaster affected areas, correct misinformation and dispel rumours. They can also be helpful in minimising insurance fraud - social media can assist in showing a claimant's whereabouts, provide information about their home and contents, and verify or disprove information provided to insurers.

One of the biggest challenges in a crisis is ensuring that the information those most at risk receive is up to date and accurate. In the event of an investigation into crisis communications, proving that information was correct to the best of your knowledge at the time of posting is crucial. As such, insurers should invest in comprehensive archiving to ensure their social media posts are covered, and recommend archiving to all businesses who deal in social media communications.

*2018 Sensis social media report

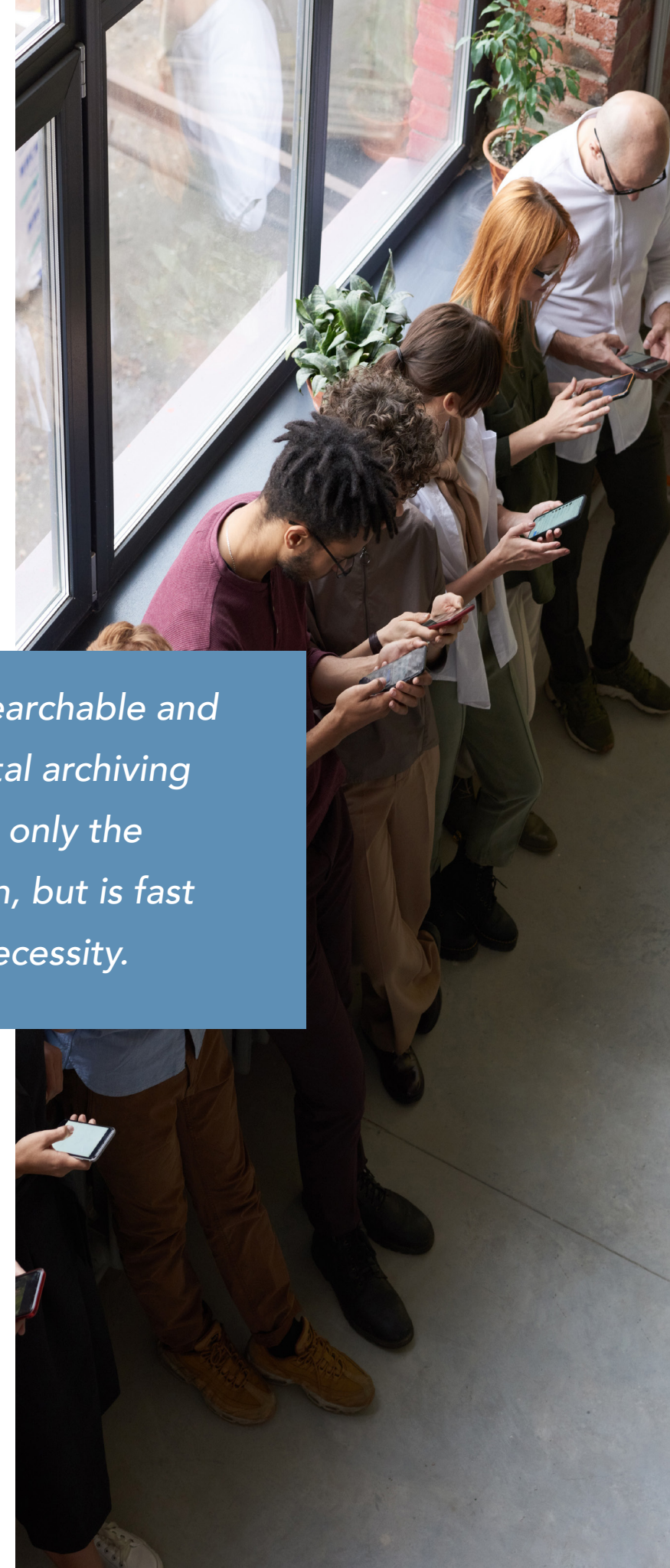
06

MITIGATING YOUR ORGANISATIONAL RISK

Depending on how many communication channels are active for your institution, or how many records your channels generate, you could be looking at a tremendous amount of archiving responsibilities – capturing detailed records, including additional media, links, and metadata, and ensuring those records are stored somewhere secure and searchable is a full-time job in itself!

Whether your institution is dealing with complaints, moderating disputes or user comments which could result in legal action, or providing information in a crisis, a comprehensive archiving solution is crucial for monitoring and managing any online incidents. The more efficiently an incident is dealt with, the faster your institution can restore stability and safety to your social media platforms. However, this is far easier said than done – after all, who has time to review every social media chat? Even if you did, how does one accurately determine which conversation may pose future risk?

The safest (and simplest!) way to meet policy standards would be to capture everything, then remove records that have no ongoing value, but when you're dealing with such a long list of online content sources, storing hard copies of even one online incident could require massive amounts of paper, storage space and employee time. Keeping records like this for every online interaction would be impossible to perform manually.



A real-time, searchable and verifiable digital archiving solution is not only the better solution, but is fast becoming a necessity.

CAPTURING INFORMATION



An essential part of managing your business information and records is to capture it into systems that manage and support its use over time. Manual screenshots entered into spreadsheets are not considered acceptable records, as there is no associated metadata to prove the record is in its original, unaltered state, nor are they convenient in the instance that a record needs to be retrieved for use in legal proceedings or as part of an audit.

CAPTURE SHOULD BE EASY

Make the capture process easy for all staff. This should reduce the risk of information and records not being captured.

Where possible:

- automate the process
- integrate capture into normal business processes
- provide clear, precise instructions and support

Approved locations may include:

- electronic document and records management systems
- business systems and databases specific to your institution
- administration systems for finance and human resources management
- third-party applications

Staff should know where to capture their information. Business information and records should not be kept on personal drives or group workspaces.

08

RETRIEVING INFORMATION

Having your detailed, real-time records available in a secure archive is of little use if you can't find the records when required. To get the most out of your archival system, you need to be able to collect social media engagements, comments, conversations and threads, including digital media and link capture, and store them in one searchable archive. This way, context is preserved, as even edits and deletions are captured and able to be retrieved.

For your customers, this can mean a more seamless service experience, as their social media communications can be retrieved as simply as an email, even if the post they first left their comment on no longer exists.

Data sovereignty is another consideration when selecting an archiving tool or service. Data centres for most social media archiving services are based in the US – for financial service providers, this can be problematic, as this can make private data subject to US laws (specifically the Patriot Act) and subpoenas. For many organisations, hosting in the US is too risky as it leaves clients vulnerable to having sensitive information obtained by foreign agents.

By choosing services that offer hosting in Australia, you can maintain the highest standards of customer privacy.

'To continue creating economic profit for shareholders, banks need to become *simpler and smaller*, but *more deeply connected to customers* than they have been in the past.'

- PWC, *Escaping the Commodity Trap - The Future of Banking in Australia*, 2016

09

THE EVIDENCE IS IN: IT'S TIME TO INVEST IN SERIOUS SOCIAL MEDIA ARCHIVING

As social media management and moderation policies grow stricter and broader in their scope, a traditional manual approach to archiving online content will no longer cut it. If your institution hasn't already implemented policies around digital record keeping, it's very likely that archiving social media will be law within the next decade. As such, a comprehensive, searchable social media archiving tool is the easiest way to ensure compliance.

Brolly's social media archiving service is ready to help your organisation meet these demands. We use intelligent software to automatically archive your social media 24/7, so you don't miss a thing. With the ability to search and retrieve records by date, platform and keyword, we ensure your business is ready to quickly respond to any crisis or incident that occurs online. All data captured by Brolly is processed and stored locally, using Australian data centres, so your clients privacy is protected. Contact us to learn more about how we can help your institution tackle the 21st-century hurdles of social media archiving.